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4
5 IN THE CIRCUIT COURT OF THE STATE OF OREGON
6 FOR THE COUNTY OF MARION

7 VIKRAM ANANTHA and) Case No.
8 MICHA GROSS, Oregon Electors,)
9) **COMPLAINT**
Plaintiffs,) (Petition for Judicial Review of Act or
10 vs.) Failure to Act by Secretary of State
BEVERLY CLARNO, Oregon Secretary of State,) under ORS 246.910(1))
11 Defendant.) (Filing fee of \$281 pursuant to
12) ORS 21.135(1) & (2))
13) (Not Subject to Mandatory Arbitration)
14) ELECTIONS CASE - EXPEDITED
15) REVIEW REQUESTED UNDER
ORS 246.910(4)

16 Plaintiffs allege as follows:

17 **OVERVIEW OF CASE**

18 1.

19 This case arises from the Secretary of State's decisions under OAR 165-014-0028 to reject three
20 statewide citizen ballot measure initiative petitions for the November 3, 2020 General Election.
21 Specifically, the Secretary of State rejected Initiative Petition 2020-35 ("IP 35"), Initiative Petition 2020-
22 36 ("IP 36"), and Initiative Petition 2020-37 ("IP 37") on the basis that they violate the "single-subject"
23 provision of Article IV, section 1(2)(d) of the Oregon Constitution.

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2.

In making her decisions to reject IP 35, IP 36, and IP 37, the Secretary of State did not follow standard procedures. Historically, the Secretary of State rarely rejects initiative petitions for non-compliance with the “single-subject” provision of Article IV, section 1. And, historically, the Secretary of State has only rejected an initiative petition for non-compliance with Article IV, section 1 after receiving a written opinion from the Attorney General. However, in this instance, the Secretary of State rejected IP 35, IP 36, and IP 37 without first obtaining written advice from the Attorney General. Rather, the Secretary chose instead to follow the advice of her Deputy Secretary of State and Elections Division director. Both are political appointees. The Secretary of State then issued a public notice regarding her decisions in which she was quoted as saying that rather than follow well-settled Oregon law, which she deemed too “lenient,” the Secretary would now apply her own interpretation of the “single-subject” provision of the Oregon Constitution.

3.

The Secretary of State’s decisions to reject IP 35, IP 36, and IP 37 prevent the initiatives from proceeding. Without intervention from the Court, the initiatives may not be circulated for signature collection and will not appear on the November 2020 General Election ballot.

4.

Plaintiffs seek judicial review of the Secretary of State’s decisions to reject IP 35, IP 36, and IP 37 under the “single-subject” provision of Article IV, section 1(2)(d) of the Oregon Constitution. In the event the Court determines that the Secretary of State’s decisions were made in error, then Plaintiffs request the following relief: (1) reversal and remand of the Secretary of State’s rejection decisions; (2) declarations that IP 35, IP 36, and IP 37 comply with the “single-subject” provision of Article IV, section 1(2)(d) of the Oregon Constitution; and (3) injunctive relief compelling the Secretary of State to immediately continue with next steps in processing the initiative petitions for the 2020 election cycle.

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1 **THE PARTIES**

2 5.

3 Plaintiff Micha Elizabeth Gross resides in Coos County, Oregon. Plaintiff Vikram Anantha
4 resides in Multnomah County, Oregon. Both are Oregon electors who are registered to vote in Oregon.
5 Both Plaintiffs support IP 35, IP 36, and IP 37.

6 6.

7 Defendant Beverly A. Clarno is Oregon's Secretary of State.

8 **STANDING, JURISDICTION AND VENUE**

9 7.

10 Plaintiffs have standing pursuant to ORS 246.910. That statute provides in relevant part:

11 “(1) A person adversely affected by any act or failure to act by the Secretary of State, a
12 county clerk, a city elections officer or any other county, city or district official
13 under any election law, or by any order, rule, directive or instruction made by the
14 Secretary of State, a county clerk, a city elections officer or any other county, city or
15 district official under any election law, may appeal therefrom to the circuit court for
16 the county in which the act or failure to act occurred or in which the order, rule,
17 directive or instruction was made.

18 “(2) An appeal described in subsection (1) of this section of an order of the Secretary of
19 State approving or disapproving a state initiative petition for circulation for the
20 purpose of obtaining signatures of electors must be filed within 60 days following
21 the date the order is served.”

22 ORS 246.910. Also, OAR 165-014-0028(6) specifically provides for ORS 246.910 review of the
23 Secretary of State's “single-subject” compliance determination for citizen-initiated ballot measures.

24 8.

25 The Secretary of State's decisions under OAR 165-014-0028(4) to reject IP 35, IP 36,
26 and IP 37 are acts under an election law, order, rule, directive, or other instruction made by the
Secretary of State.

9.

As supporters of IP 35, IP 36, and IP 37, and as registered Oregon voters, Plaintiffs are adversely
affected by the Secretary of State's decisions to reject the initiative petitions.

10.

The Court has jurisdiction over this case pursuant to ORS 246.910(1).

11.

Venue is proper in Marion County because it is the county where the Secretary of State maintains her office and in which the Secretary of State's challenged acts occurred (i.e. the decisions to reject IP 35, IP 36, and IP 37). *See* ORS 246.910(1) and OAR 165-014-0028(6).

12.

This action is timely filed pursuant to ORS 246.910(2) because it is brought within 60 days of the Secretary of State's decisions rejecting IP 35, IP 36, and IP 37.

THE INITIATIVE PROCESS

13.

Article IV, section 1(2)(a) of the Oregon Constitution provides the people with the initiative lawmaking authority, which is the power to propose statutes and amendments to the Constitution that will go into effect if approved by the voters at a statewide election.

14.

The Oregon Constitution sets a series of requirements and conditions on the exercise of the initiative power. As relevant here, an initiative petition to propose a statute or amendments to existing statutes must be signed by at least six percent of qualified electors who cast votes for all candidates for governor at the last election in which a governor was elected to a four-year term. The petition must be filed with the Secretary of State at least four months before the election at which the proposed law will be voted on. And, the initiative must "embrace one subject only and matters properly connected therewith."

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15.

The Oregon legislature has enacted a series of statutes addressing the administration of the initiative process. The individuals who propose a statewide initiative are called the “Chief Petitioners.” To begin the initiative process, the Chief Petitioners file with the Secretary of State a “prospective petition” which contains the text of the proposed measure along with the signatures of at least 1,000 electors. After the Secretary of State has received a prospective petition and verified the sponsorship signatures, the Secretary forwards it to the Attorney General. The Attorney General then has five days to prepare a draft ballot title. The ballot title is a three-part description of the proposed measure in the form of: (a) a caption of no more than 15 words; (b) a “yes” and “no” vote result statement of no more than 25 words each explaining the consequences of a “yes” or “no” vote; and (c) a summary of not more than 125 words. The Secretary of State then provides notice of the public’s right to comment on the draft ballot title. After receiving any comments, the Secretary forwards them to the Attorney General. The Attorney General then considers those comments and certifies either the original draft ballot title or a revised ballot title. Any elector who previously commented on the draft ballot title who is dissatisfied with the ballot title certified by the Attorney General may seek judicial review in the Oregon Supreme Court. The Supreme Court then considers the challenge and whether the title “substantially complies” with the statutory requirements for a ballot title. The Supreme Court either certifies the ballot title to the Attorney General or refers the ballot title to the Attorney General for modification. The Supreme Court’s review must be conducted expeditiously to ensure the orderly and timely circulation of the initiative petition.

16.

An initiative petition cannot be circulated for signature collection until the ballot title process described in the preceding paragraph is completed and a final ballot title has been certified.

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17.

During the ballot title process, the Secretary of State reviews the prospective petition for compliance with the procedural requirements of Article IV, section 1, including whether the proposed measure “embraces on subject and matters properly connected therewith.” OAR 165-014-0028(1). The Secretary solicits comments from the public on those issues at the same time the Attorney General is drafting the ballot title. *Id.* at (2). Those comments are submitted at the same time comments on the Attorney General’s draft ballot title are submitted. After reviewing the procedural compliance comments, the Secretary notifies the Chief Petitioners of the results of her review. *Id.* at (4). If the Secretary determines that a proposed measure does not satisfy the procedural constitutional requirements, she may not approve the cover and signature sheet that contains the certified ballot title and that enables the Chief Petitioners to collect signatures in support of the proposed measure. *Id.* at (5). Any elector who is dissatisfied with the Secretary’s determination regarding procedural constitutional compliance may seek judicial review before the Marion County Circuit Court pursuant to ORS 246.910. *See also* OAR 165-014-0028(6).

18.

Historically, the Attorney General has conducted the legal review of initiative petitions for compliance with the procedural requirements of Article IV, section 1 for the Secretary of State. If the Attorney General concluded that an initiative petition did not comply with the procedural requirements of the Oregon Constitution, the Attorney General would provide a written legal opinion to the Secretary of State explaining why the Attorney General believed the initiative did not comply with the procedural requirements of the Oregon Constitution. The Secretary of State would not reject an initiative petition for non-compliance with the procedural requirements of the Oregon Constitution unless the Secretary of State first received a written opinion from the Attorney General setting forth why the Attorney General believed the initiative petition did not comply with the procedural requirements of the Oregon Constitution. When the Secretary of State then notified the Chief Petitioners that the initiative did not

1 comply, the Secretary of State would provide the Chief Petitioners (and any member of the public, upon
2 request) with the Attorney General’s analysis.

3 19.

4 After Dennis Richardson became Secretary of State in 2017, he changed the prospective petition
5 review process so that the Department of Justice would only review initiative petitions for procedural
6 compliance on his request. On information and belief, since Secretary Clarno became Secretary of State,
7 she has retained Secretary Richardson’s practice.

8 **THE “SINGLE-SUBJECT” PROVISION OF ARTICLE IV,**
9 **SECTION 1(2)(d) OF THE OREGON CONSTITUTION**

10 20.

11 Article IV, section 1(2)(d) of the Oregon Constitution provides, in relevant part: “A proposed law
12 or amendment to the Constitution shall embrace but one subject only and matters properly connected
13 therewith.” Article IV, section 1(2)(d) is similar to Article IV, section 20, which provides: “Every Act
14 shall embrace but one subject, and matters properly connected therewith.” Sections 1(2)(d) and 20,
15 together, are generally referred to as the “single-subject rule.” The Oregon Supreme Court has held that
16 sections 1(2)(d) and 20 “should be given the same meaning.”

17 21.

18 The “single-subject” requirement is not rigorous. The Oregon Supreme Court repeatedly has
19 stated that the word “subject” should be interpreted as broadly as possible. For example, the Oregon
20 Supreme Court has stated:

21 “All that is necessary is that the act should embrace *one general subject*; and by this is
22 meant merely that all matters treated should fall under *one general idea*, be so connected
or related to each other, either logically or in popular understanding, as to be parts of, or
germane to, one general subject.”

23 *Eastman v. Jennings-MacRae Logging Co.*, 69 Or 1, 10-11 (1974) (emphasis in original; internal
24 quotation marks omitted; citation omitted).

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26 /////

1 22.

2 Consistent with the Supreme Court’s long-standing jurisprudence, single-subject challenges
3 routinely are rejected by Oregon courts. In the history of the State of Oregon, there is only one reported
4 case where an Oregon appellate court has invalidated a law through the single-subject rule. In that case,
5 *McIntire v. Forbes*, 322 Or 426 (1996), the Court could find no perceivable “logical connection” relating
6 the disparate sections of the bill challenged. In so concluding, the Court referred to that lone decision as
7 “an extreme case.”

8 **THE INITIATIVES**

9 23.

10 Initiative Petitions 35, 36, and 37 are all statewide initiative petitions that would protect Oregon
11 forests and forest waters. IP 35 is the most expansive of the initiatives and includes all the provisions of
12 IP 36 and IP 37. IP 36 and IP 37 each contain some, but not all, of the provisions of IP 35.

13 24.

14 IP 35 has provisions that limit logging, aerial pesticide application and related forestry activity. IP
15 35 also contains provisions to limit conflicts of interest for public officials who make decisions regarding
16 the protection of Oregon forests and forest waters.

17 25.

18 IP 36 would limit logging and related forestry activity. IP 36 also contains provisions to limit
19 conflicts of interest for public officials who make decisions regarding the protection of Oregon forests
20 and forest waters.

21 26.

22 IP 37 restricts aerial pesticide application near Oregon forest waters, dwellings and schools. IP 37
23 also contains provisions to limit conflicts of interest for public officials who make decisions regarding
24 the protection of Oregon forests and forest waters.

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1 27.

2 IP 35, IP 36, and IP 37 each comply with the procedural requirements of Article IV, section 1 of
3 the Oregon Constitution, including the requirement of section 1(2)(d) that: “A proposed law or
4 amendment to the Constitution shall embrace but one subject only and matters properly connected
5 therewith.”

6 28.

7 IP 35, IP 36, and IP 37 were filed with the Secretary of State on July 9, 2019.

8 29.

9 On August 15, 2019, the Secretary of State confirmed that IP 35 and IP 36 had sufficient
10 sponsorship signatures to obtain a ballot title. On August 19, 2019, the Secretary of State confirmed that
11 IP 37 had sufficient sponsorship signatures to obtain a ballot title.

12 30.

13 On August 23, 2019, the Secretary of State received draft ballot titles from the Attorney General
14 for IP 35 and IP 36. The Secretary of State issued a public notice, seeking comments on the draft ballot
15 title and “public input on whether [each] petition complies with the procedural requirements established
16 in the Oregon Constitution.” On August 26, 2019, the Secretary of State received a draft ballot title from
17 the Attorney General for IP 37. The Secretary of State issued a public notice, seeking comments on the
18 draft ballot title and “public input on whether the petition complies with the procedural constitutional
19 requirements established in the Oregon Constitution for initiative petitions.”

20 **THE SECRETARY OF STATE’S HIGHLY UNORTHODOX REVIEWS OF IP 35, IP 36,**
21 **AND IP 37 FOR COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS OF THE**
22 **OREGON CONSTITUTION**

23 31.

24 In response to the notices discussed in the preceding paragraph, the Secretary of State received
25 public comments regarding whether IP 35, IP 36, and IP 37 comply with the procedural requirements of
26 the Oregon Constitution.

32.

On September 24, 2019, the Secretary of State notified the Chief Petitioners of IP 35, IP 36, and IP 37 that the Secretary of State had rejected each initiative. As for IP 35, the Secretary wrote: “The Secretary believes that Section 6 of IP 35 is not ‘properly connected’ to the rest of the initiative and therefore embraces more than one subject.” As for IP 36, the Secretary wrote: “The Secretary believes that Sections 3 and 4 of IP 36 are not ‘properly connected’ to the rest of the initiative and therefore IP 36 embraces more than one subject.” As for IP 37, the Secretary wrote: “The Secretary believes that Section 3 of IP 37 is not ‘properly connected’ to the rest of the initiative and therefore IP 37 embraces more than one subject.” For each of the initiatives, the Secretary continued: “The Secretary has determined it does not comply with the procedural requirements of the Oregon Constitution for initiative petitions, particularly, the single subject requirement.”

33.

The process that led to the Secretary of State’s determinations that IP 35, IP 36, and IP 37 violate the single-subject rule was a radical departure from prior practice. On information and belief, the Secretary of State’s office did not request a written opinion from the Attorney General’s office regarding whether IP 35, IP 36, or IP 37 complied with the single-subject rule. Nor did the Attorney General’s office actually provide a written opinion to the Secretary of State finding that IP 35, IP 36, or IP 37 violate the single-subject rule.

34.

Rather, on the afternoon of September 23, 2019, the Secretary of State held a meeting with Deputy Secretary of State Rich Vial and Elections Division Director Steve Trout. A lawyer from the Attorney General’s Office -- Assistant Attorney General Amy Alpaugh -- also attended the meeting. The meeting was hastily arranged because the Secretary of State had to make a determination the following day as to whether IP 35, IP 36, and IP 37 comply with the procedural requirements of the Oregon Constitution.

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1 35.

2 The Secretary of State has admitted that she did not receive written advice from Ms. Alpaugh or
3 anyone else in the Attorney General's office that IP 35, IP 36, or IP 37 violate the single-subject rule.
4 The Secretary of State has asserted attorney-client privilege and refuses to allow the Attorney General's
5 office to disclose what verbal advice, if any, was provided by Ms. Alpaugh to the Secretary of State.

6 36.

7 The Secretary of State has further admitted that rather than rely on the advice and guidance of the
8 Attorney General, the Secretary of State relied on the advice of her own staff, Elections Division
9 Director Steve Trout and Deputy Secretary of State Richard Vial, both political appointees. On
10 information and belief, Mr. Vial advised the Secretary of State that IP 35, IP 36, and IP 37 violate Article
11 IV, section 1(2)(d). Prior to joining the Secretary of State's office, Mr. Vial had served as a legislator in
12 the Oregon House and also was an attorney in private practice. He has no prior expertise in elections
13 law.

14 37.

15 On October 3, 2019, the Secretary of State issued a public statement regarding her decision to
16 reject IP 35, IP 36, and IP 37. In that statement, the Secretary of State was quoted as saying: "In
17 reviewing these initiative petitions, I followed the normal practices of this office." That statement is
18 false. As discussed above, the Secretary of State did not follow the customary practices of the office. In
19 the normal and customary practice of the Secretary of State's office, the Secretary of State would take
20 the extraordinary step of rejecting an initiative petition for non-compliance with the procedural
21 requirement of the Oregon Constitution only after receiving advice and a written opinion from the
22 Attorney General's office setting forth why an initiative petition violated the procedural requirements of
23 the Oregon Constitution. For IP 35, IP 36, and IP 37, the Secretary of State did not seek, or obtain, such
24 an opinion. Rather, the Secretary of State relied on the guidance of her political appointees.

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38.

In the Secretary of State's October 3, 2019 public statement, the Secretary of State criticizes how Oregon courts have interpreted and applied the single-subject rule. The Secretary is quoted as saying: "While some courts have been lenient in determining whether a petition meets the single-subject rule, I have a responsibility to do everything possible to ensure that each ballot measure is clear and embraces only one subject." That statement is particularly disconcerting because it indicates that the Secretary has applied, and intends to continue to apply, her own interpretation of the law, rather than adhere to the well-settled law as established by Oregon courts.

39.

In the Secretary of State's October 3, 2019 public statement, the Secretary of State also displayed a general lack of knowledge regarding the subject that IP 35, IP 36, and IP 37 address. Specifically, she is quoted as saying: "I believe questions around how the Oregon Forest Council manages forests and around how aerial spraying should be conducted in our forests are very different." There is no Oregon governmental body called the "Oregon Forest Council." However, there is a timber industry lobbying entity called the "Oregon Forest & Industries Council." IP 35, IP 36 and IP 37 do not address or discuss the non-existent "Oregon Forest Council" or the Oregon Forests & Industries Council. The initiatives do have provisions relating to the Oregon Forestry Board, which is a public entity that regulates activities in Oregon forests.

40.

As a lawmaker, Oregon House Speaker and then-candidate for state treasurer, Secretary Clarno received over \$36,000 in contributions from timber interests. As a lawmaker, Deputy Secretary of State Vial took over \$19,000 in contributions from timber interest. Those included contributions from the Oregon Forests & Industry Council.

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FIRST CLAIM FOR RELIEF
Initiative Petition 35
(Review under ORS 246.910(1))

41.

Plaintiff realleges and incorporates by reference paragraphs 1-40.

42.

IP 35 complies with the procedural requirements of the Oregon Constitution, including the “single-subject rule” of Article IV, section 1(2)(d). The Secretary of State erred when she determined otherwise.

43.

Pursuant to ORS 246.910, Plaintiff is entitled to the following relief:

- (1) Reversal and remand of the Secretary of State’s rejection decision;
- (2) A declaration that IP 35 complies with the procedural requirements of the Oregon Constitution, including the “single-subject” provision of Article IV, section 1(2)(d);
- (3) Injunctive relief compelling the Secretary of State to immediately reinstate IP 35 and continue with next steps in processing IP 35 for the 2020 election cycle; and
- (4) Such other relief as the Court deems fair and equitable.

44.

Upon prevailing, Plaintiffs are entitled to recover their reasonable attorney fees under the public benefit doctrine. *See, e.g. Deras v. Myers*, 272 Or 47 (1975); *Lewis v. Beyer*, 262 Or App 486 (2014), *adh’d to as modified on recons.*, 266 Or App 208 (2014).

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SECOND CLAIM FOR RELIEF
Initiative Petition 36
(Review under ORS 246.910(1))

45.

Plaintiff realleges and incorporates by reference paragraphs 1-40.

46.

IP 36 complies with the procedural requirements of the Oregon Constitution, including the “single-subject rule” of Article IV, section 1(2)(d). The Secretary of State erred when she determined otherwise.

47.

Pursuant to ORS 246.910, Plaintiff is entitled to the following relief:

- (1) Reversal and remand of the Secretary of State’s rejection decision;
- (2) A declaration that IP 36 complies with the procedural requirements of the Oregon Constitution, including the “single-subject” provision of Article IV, section 1(2)(d);
- (3) Injunctive relief compelling the Secretary of State to immediately reinstate IP 36 and continue with next steps in processing IP 36 for the 2020 election cycle; and
- (4) Such other relief as the Court deems fair and equitable.

48.

Upon prevailing, Plaintiffs are entitled to recover their reasonable attorney fees under the public benefit doctrine. *See, e.g. Deras v. Myers*, 272 Or 47 (1975); *Lewis v. Beyer*, 262 Or App 486 (2014), *adh’d to as modified on recons.*, 266 Or App 208 (2014).

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THIRD CLAIM FOR RELIEF
Initiative Petition 37
(Review under ORS 246.910(1))

49.

Plaintiff realleges and incorporates by reference paragraphs 1-40.

50.

IP 37 complies with the procedural requirements of the Oregon Constitution, including the “single-subject rule” of Article IV, section 1(2)(d). The Secretary of State erred when she determined otherwise.

51.

Pursuant to ORS 246.910, Plaintiff is entitled to the following relief:

- (1) Reversal and remand of the Secretary of State’s rejection decision;
- (2) A declaration that IP 37 complies with the procedural requirements of the Oregon Constitution, including the “single-subject” provision of Article IV, section 1(2)(d);
- (3) Injunctive relief compelling the Secretary of State to immediately reinstate IP 37 and continue with next steps in processing IP 37 for the 2020 election cycle; and
- (4) Such other relief as the Court deems fair and equitable.

52.

Upon prevailing, Plaintiffs are entitled to recover their reasonable attorney fees under the public benefit doctrine. *See, e.g. Deras v. Myers*, 272 Or 47 (1975); *Lewis v. Beyer*, 262 Or App 486 (2014), *adh’d to as modified on recons.*, 266 Or App 208 (2014).

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs pray for judgment against Defendant Clarno as follows:

- 3 1. Reversing and remanding Defendant Clarno’s rejection decisions regarding IP 35, 36,
4 and 37;
- 5 2. Declaring that IP 35, IP 36, and IP 37 comply with the procedural requirements of the
6 Oregon Constitution, including the “single-subject” provision of Article IV, section
7 1(2)(d);
- 8 3. Granting injunctive relief compelling Defendant Clarno to immediately reinstate IP 35, IP
9 36, and IP 37 and continue with next steps in processing those initiative petitions for the
10 2020 election cycle;
- 11 4. Awarding Plaintiffs their reasonable attorney fees under the public benefit doctrine;
- 12 5. Awarding Plaintiffs their costs and disbursements incurred herein; and
- 13 5. Granting such other relief as the Court deems just and proper.

14
15 DATED this 11th day of October 2019.

16
17 _____
18 Vikram Anantha, Plaintiff

19 _____
20 Micha Gross, Plaintiff

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